

In the Matter of Merchant Mariner's Document No. Z-1005498 and all
Documents of the same name
Issued to: JOSEPH H. McFARLAND

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1094

JOSEPH H. McFARLAND

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 16 April 1958, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman documents upon finding him guilty of misconduct. The two specifications allege that while serving as a writing room steward on board the United States SS UNITED STATES under authority of the document above described, on or about 20 September 1957, Appellant wrongfully entered a passenger's stateroom and he wrongfully fraternized with the passenger, Mrs. Jo Ann Baethge.

After considering the evidence consisting of an entry (with attachments) in the Official Logbook, Mrs. Baethge's deposition obtained in France by interrogatories, the testimony of the tourist class chief steward and Appellant's testimony, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of three months outright plus three months on twelve months' probation.

FINDINGS OF FACT

On 20 September 1957, Appellant was serving as tourist class writing room steward on board the United States SS UNITED STATES and acting under authority of his Merchant Mariner's Document No. Z-1005498 while the ship was at sea enroute to Europe after departing from New York on 19 September.

Mrs. Jo Ann Baethge and her thirteen-month-old son shared a stateroom with a French woman and her baby. On afternoon of 20 September 1957, Mrs. Baethge and her baby were alone in the stateroom. At approximately 1645, Mrs. Baethge was sitting on the lower bunk - fully clothed except for her shoes - reading a magazine while waiting for the stewardess to bring the baby's bottle. When there was a knock on the door, she said, "Come in," supposedly to the stewardess. Appellant opened the door entered the room and closed the door. He offered Mrs. Baethge cigarettes. When she declined the offer, Appellant sat down on the edge of the bed and suggested that Mrs. Baethge have something to drink. Again, she declined. Appellant volunteered the information that

his name was Joseph and asked Mrs. Baethge whether her name was Jo Ann. Apparently receiving no reply to this, Appellant asked if she would be in the room at 2100. Mrs. Baethge answered that she did not know. Appellant persistently stated that he would bring her a drink at 2100.

At this point, Appellant got up from the bed and approached Mrs. Baethge with outstretched hands but he did not touch her. Appellant said that he would be in trouble if anyone found out about this because he was breaking regulations. Mrs. Baethge asked Appellant to leave and he did so with some hesitation after she again picked up the magazine which she had been reading when Appellant knocked at the door.

Mrs. Baethge dressed her child and immediately reported the matter to the tourist class chief steward's office. Later in the evening, she identified Appellant as the person who had entered her stateroom that afternoon.

Appellant has no prior record with the Coast Guard.

BASED OF APPEAL

This appeal has been taken from the order imposed by the Examiner.

Appellant urges that:

POINT I. The burden of proof against Appellant has not been sustained as a matter of law because the testimony of Mrs. Baethge by deposition is uncorroborated as to the substantive facts found by the Examiner.

POINT II. Even if Mrs. Baethge's version is accepted, there is not proof that Appellant's conduct was "wrongful" as alleged since it constituted normal service to a passenger.

POINT III. The charges against Appellant should be dismissed.

APPEARANCE: Reiman & Reiman of New York City by Irving M. Reiman, Esquire of Counsel.

The contentions raised on appeal are without merit and the order of the Examiner will be affirmed as the result of proof of both specifications.

POINT I

Whether to accept the testimony given by Appellant at the hearing or to reject it in favor of the opposing testimony by Mrs. Baethge contained in her deposition was a question of credibility to be resolved by the Examiner who heard and observed Appellant while he testified. The Examiner stated that he accepted the testimony of Mrs. Baethge with regard to the conduct of Appellant.

Uncorroborated testimony by deposition may be accepted, on an issue of credibility, in preference to the testimony of a live witness. Watson v. Hendry Corp. (C.A.2, 1957), 245 F2d 463. It has been stated before in these proceedings that a deposition constitutes substantial evidence in support of the findings. Commandant's Appeal Decision Nos. 905, 944. Hence, the above findings of fact are based on the testimony of Mrs. Baethge.

POINT II

Even Appellant indicated in his testimony that his conduct was not within the scope of the duties of a writing room steward. He testified that his duties included going to passengers' rooms only for specific purposes upon request of the passengers. Appellant told Mrs. Baethge that he was breaking regulations. The latter statement was undoubtedly correct in view of the stress the courts have placed on the fact that the invasion of the privacy of a ship's passenger is a serious matter. See Commandant's Appeal Decision No. 905 citing judicial decisions to this effect.

ORDER

The order of the Examiner dated at New York, New York, on 16 April 1958, ~~is~~ **AFFIRMED.**

A. C. Richmond
Vice Admiral, U. S. Coast Guard
Commandant

Dated at Washington, D. C., this 16th day of April, 1959.